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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,423	02/26/2004	Richard Alan Oleson	BU129/0BU26-U	4739
24350	7590	08/04/2004	EXAMINER	
STITES & HARBISON, PLLC 400 W MARKET ST SUITE 1800 LOUISVILLE, KY 40202-3352			LINDSEY, RODNEY M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/787,423

**Applicant(s)**

OLESON, RICHARD ALAN

**Examiner**

Rodney M. Lindsey

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/25/4, 7/16/4</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews III in view of Jamieson. With respect to claims 1, 8 and 9 Andrews III shows a helmet comprising two interfaces 15 and two pairs of brackets 20, 35 (Figures 3 and 6) with mating ends 25, 26 and pivot point ends 21, 36 for establishing pivot axes as at 23, 37. The difference between Andrews III and claims 1, 8 and 9 is that Andrews III does not teach a pivotal axis of one of the pair of brackets more forward or rearward than a pivotal axis of the other pair of brackets. Jamieson teaches old to define on a bracket 28 an arm having an opening for defining a pivotal axis rearward of the location of the helmet interface at 23 (contrast Figures 14 and 17). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify a pair of the brackets of Andrews III such that the opening is defined rearward of the opening in another pair of the brackets in the manner of Jamieson at 28 to achieve the advantage of accommodating a particularly designed helmet accessory. With respect to claim 2 note the midway location of the interfaces 15 of Andrews III. With respect to claim 3 note the midway location of the pivot axis at 23 of Andrews III. With respect to claim 5 note such teaching by Jamieson. With respect to claim 6 note the use of goggles or a face shield in Andrews III (see

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column 1, line 11). With respect to claim 7 note the prongs 26 on the mating ends of the brackets of Andrews III.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews III in view of Jamieson as applied to claim 3 above, and further in view of Hellberg. Andrews III does not teach clearly the forward location of the second pivotal axis. Hellberg teaches old to define on a bracket an arm 14 having an opening for defining a pivotal axis forward of the location of the helmet interface at 11. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify a pair of the brackets of Andrews III such that the opening is defined forward of the opening in another pair of the brackets in the manner of Hellberg at 14 to achieve the advantage of accommodating a particularly designed face shield.

#### ***Response to Arguments***

4. Applicant's arguments filed June 23, 2004 have been fully considered but they are not persuasive. Contrary to applicant's remarks even though Andrews does not move the pivot axis forward and rearward as claimed, Andrews does in fact shifts the pivot axis by the different pairs of brackets, which is conceptually as applicant does. The concept of shifting the axis forward and rearward is within the body of the prior art as evidenced by the teachings of Jamieson and Hellberg. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir.

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1992). In this case, clearly Andrews is concerned with mounting different accessories with the teaching references of Jamieson and Hellberg disclosing other bracket constructions usable for mounting accessories. One of ordinary skill in the art at the time of the invention would readily have been motivated to construct alternative brackets as taught by Jamieson and Hellberg to achieve the advantage of mounting the particular accessories taught by these references. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The prior art references to Jamieson and Hellberg clearly suggest that the brackets of Andrews need not be limited to just the constructions shown. The rejection of claims 1-9, ably set forth above is deemed proper in all respects.

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period


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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (703) 305-7818. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Rodney M. Lindsey  
Primary Examiner  
Art Unit 3765

rml